

Student Press Law Center's

HIGH SCHOOL Top10



The ten questions high school student journalists most frequently ask about their rights

Q: Do high school students have First Amendment rights?

A: Yes. As the United States Supreme Court said in 1969, “It can hardly be argued that either students or teachers shed their constitutional right to freedom of speech at the schoolhouse gate.” But the First Amendment prohibits only *government officials* from suppressing speech; it does not prevent school censorship at private schools. A state constitution, statute or school policy could provide private school students with free speech protections.

Q: What about the Hazelwood decision?

A: *Hazelwood School District v. Kuhlmeier*, the 1988 U.S. Supreme Court decision, gave public high school officials greater authority to censor some school-sponsored student publications if they choose to do so. But the ruling doesn’t apply to publications that have been opened as “public forums for student expression.” It also requires school officials to demonstrate some reasonable educational justification before they can censor anything. In addition, some states (Arkansas, California, Colorado, Iowa, Kansas, Oregon and Massachusetts) have passed laws that give students stronger free expression protection than *Hazelwood*. Other states are considering such laws.

Q: What is a “public forum for student expression”

A: A student publication is a public forum for student expression when school officials have given student editors the authority to make their own content decisions. A school can do that either through an official policy or by simply allowing a publication to operate with editorial independence.

Q: So if policy or practice indicates the content of my publication is determined by students, the Hazelwood decision doesn’t apply to me?

A: That’s right. If a student publication is a public forum for student expression, then students are entitled to stronger First Amendment protection. School officials are allowed to censor forum publications only when they can show the publication will cause a “material and substantial disruption” of school activities.

Q: What about underground or independent student publications? Are they protected from censorship?

A: Absolutely. Although public schools can establish reasonable restrictions as to the time, place and manner of distribution of underground publications, they cannot absolutely forbid their distribution on school grounds. Like school-sponsored publications that are forums, a school must show substantial disruption before they can censor an independent publication.

Q: Am I in danger of getting sued for defamation or invasion of privacy?

A: Very rarely, but it can happen, and it's important to observe professional standards if you want your work to be taken seriously. You can't be liable for defamation if you just publish a critical opinion about someone or reveal an unpleasant truth. But if you make a false accusation of fact (even one implied in an "opinion" column), then you may have committed defamation. Invasion of privacy occurs when a publication publicizes embarrassing personal information without consent and with no newsworthy justification, such as gossip about a teacher's marital problems. It can also happen if you mislabel a photo so that it gives a false impression that harms a person's reputation ("false light").

Q: Can we publish students' names and photos online?

A: Despite what many schools seem to think, no federal privacy law requires a student publication to withhold student information from the Internet or get advance written parental consent (though two states, New Jersey and Maine, appear to do so). If you're told there is such a ban, ask to see the school district policy in writing – and if the policy applies only to sites hosted on a school server (many do), see if you can get your news site hosted on a third-party server like My.hsj.org.

Q: Can I use Freedom of Information laws?

A: Yes. Freedom of Information, or "sunshine" laws, require government agencies such as public schools to open many of their official records and meetings to the public. These laws vary from state to state. Every newsroom should have a copy of the state's open records and open meetings laws – a great state-by-state guide is available on the Reporters' Committee for Freedom of the Press website, www.rcfp.org.

Q: Can I use cartoon characters, song lyrics or a theme from a popular magazine in my publication?

A: In most cases, only when you have obtained the permission of the copyright holder. Each of these works is protected by copyright law, which means others can use them only if they have obtained permission. Publishing a credit line does not take the place of permission. There is an exception to copyright law called "fair use" that can apply if you are only using a small amount of a copyrighted work in a way that does not substitute for viewing (or buying) the original.

Q: Am I allowed to re-use photos from Facebook, or Myspace, or videos from YouTube?

A: It all depends on what you're using them for. It's safest if you are critiquing the material – such as a "funniest videos" highlight segment on a broadcast, where you're adding your own commentary, or if you're making a parody or a mash-up that just "samples" other people's material as an ingredient in a brand-new creative work. The danger goes up with the commercial value of what you're using, so an AP photo published in a celebrity magazine is much riskier than an amateur Facebook photo.

